
FINAL RECOMMENDATIONS FOR THE BOARD OF BARBERING AND COSMETOLOGY

RECOMMENDATIONS OF THE JOINT COMMITTEE ON BOARDS, COMMISSIONS, AND CONSUMER PROTECTION AND THE DEPARTMENT OF CONSUMER AFFAIRS

ISSUE #1. IMPLEMENT RECOMMENDATIONS OF THE FOOT SPA WORKING GROUP? Outbreaks of infection have occurred at foot spas; to address this issue, a foot spa safety focus group has been formed.

Recommendation #1: *The Joint Committee and the Department recommend that the Board consider implementing recommendations of the working group on foot spa safety.*

Department Comments: After ongoing outbreaks of infections and other health concerns in 1999 and 2000, the Legislature passed SB 362 (Figueroa, Chapter 788, Statutes of 2003), which gave the Board authority to temporarily close an establishment (for no longer than 30 days) if it is determined upon inspection that the establishment has health and safety violations posing an immediate threat to public health and safety.

In 2005, AB 1263 (Yee) would have required the Board to adopt regulations that set forth standards and requirements for the use of pedicure equipment, establish minimum safety specifications for specified equipment, develop a consumer warning notice, and display a notice in a violator's place of business for specified violations. Governor Schwarzenegger vetoed this bill because, despite its good intentions, the bill duplicated existing regulations and "could shift responsibility for ensuring the safety of equipment from manufacturers to the Board, which may have the unintended consequence of placing the Board in the position of assuming liability, in lieu of the manufacturer, for pedicure equipment." In his veto message, the Governor directed the Department "to convene a working group consisting of the Board, county health officials, consumer groups, and pedicure equipment manufacturers, and other interested parties, to determine how we can improve the safety of pedicure equipment and ensure appropriate consumer protection without the unintended consequences created by this bill."

The Department has formed a working group on this issue, which is currently in the initial stages of meeting and beginning to consider recommendations. When this working group is finished, it will submit its recommendations to the Department and the Board.

Staff Comments: At the sunset review hearings in December, Senator Figueroa directed the Board to implement regulations to address this critical issue. The Board, however, did not do this. Instead, the Board waited for the Department to take the lead and put together a work group. The fact that a veto message had to direct the creation of a work group in order for the Board to act in this area is unacceptable. Now the Department has had to step in and will

provide recommendations.

According to the Department, the work group should be able to address the remaining outstanding issues (enforcement and outreach) in the next few meetings. Upon completion of the work group, the recommendations should be amended into the Board's sunset bill, SB 1474.

ISSUE #2: SHOULD RECIPROCITY BE PUT INTO STATUTE? The law does not allow reciprocity for any of the Board's licensing categories.

Recommendation #2: *The Joint Committee and the Department recommend that the statute be amended to allow for reciprocity with other states.*

Department Comments: Many of the Department's boards and bureaus have reciprocity provisions that allow individuals licensed outside of California, who have already demonstrated competency, to practice in California or obtain a license without completing unnecessary additional requirements. Although SB 362 (Figueroa, Chapter 788, Statutes of 2003) provided for reciprocity, the Board has not yet adopted regulations to implement the policy. Individuals licensed in other states must therefore continue to meet California-specific eligibility requirements and pass both written and practical examinations, regardless of those individuals' level of experience.

Reciprocity provisions will help minimize barriers to entry into the barbering and cosmetology profession, increase competition, promote employment, and facilitate the ability of licensed professionals to begin working in California.

The Department recommends amending the statute to provide for reciprocity for licensees from outside of California in good standing and with an active license for three of the last five years with no disciplinary action and no criminal convictions.

Staff Comments: Another major example of the lack of action on the part of the Board. The Board has dragged its feet on the implementation of reciprocity. Now reciprocity has to be provided for in statute even though the Board should have done so through regulation.

ISSUE #3: REESTABLISH THE VOLUNTARILY "INSTRUCTOR" LICENSE?

Recommendation #3: *The Joint Committee and the Department recommend that the voluntarily license for barbering instructors and cosmetology instructors and the corresponding continuing education requirements should not be reestablished.*

Department Comments: The Board is seeking to reinstate a voluntary "instructor" license category, which has been repealed in the past. This program had previously been found to be unnecessary, confusing, and outdated. The program adds nothing significant to standards already in place by both public and private schools. Since the program is voluntary and has limited enforcement authority, it cannot validly indicate professional expertise.

Under the previous regulations, an individual could sit for the instructor examinations (including both written and practical components), provided that they:

- a) have completed the 12th grade or an accredited senior high school course of study in public schools of this state or its equivalent;
- b) are not subject to denial pursuant to B&P Code Section 480;
- c) hold a valid license to practice cosmetology or barbering in this state; and
- d) have done at least one of the following:
 - 1) completed a 600-hour cosmetology or barbering instructor training course in an approved school in this state or equivalent training in an approved school in another state;
 - 2) completed not less than the equivalent of 10 months of practice as a teacher assistant or teacher aide in a school approved by the bureau; or
 - 3) practiced cosmetology or barbering in a licensed establishment in this state for a period of one year within the three years immediately preceding application, or its equivalent in another state.

AB 2168 (Correa, 2004) would have extended the provisions governing licenses for barbering or cosmetology instructors until January 1, 2006, but the bill was vetoed by Governor Schwarzenegger. In his veto message, the Governor stated that when the Board was reviewed by the Joint Committee in 2002, the Committee originally recommended the repeal of the license for instructors of barbering and cosmetology because the licenses were voluntary and the standards and requirements to obtain them were flawed and outdated. However, this language was removed from the Joint Committee's bill (SB 362, Figueroa, Chapter 788, Statutes of 2003) to allow the Board one year to study and address this issue, which has not been done. The Board has not demonstrated a need for this program, nor has it indicated that it has solved problems previously indicated.

The Department recommends not reestablishing the instructor license as it believes that the voluntary instructor licensing program is flawed and unnecessary. This program could create duplicative regulations for instructors who work in private barbering and cosmetology schools. Additionally, it could mislead the public to think the license program is not voluntary, but required.

Staff Comments: This issue is one more prime example of where the Board has either ignored or acted contrary to the will and intent of the Legislature. The Board has wasted enough time on this issue.

ADDITIONAL JOINT COMMITTEE RECOMMENDATIONS

ISSUE #4: RESOLVE ISSUES WITH TRAINING REQUIREMENTS? Should the Board be required to work with the Department's Office of Examination Resources (OER) to resolve issues with training requirements?

Recommendation #4: *The Joint Committee recommends that the Board should be required to work with OER to resolve issues with training requirements. The Board should provide OER*

all necessary resources and assistance to set up another task force with subject matter experts to more fully review the 1,600 hour training requirement. The requirements should be changed to reflect the information in OER's most recent occupational analysis.

Staff Comments: The Board currently requires that cosmetologists have 1,600 hours of training for licensure. Although a recent Occupational Analysis performed by the Department shows that most licensed cosmetologists only perform hair styling tasks, individuals are required to be trained in a wide variety of skills to receive licensure. This issue has been presented to the Board several times during the sunset review process, beginning in 1999. In the 2003 sunset review, the Board was instructed to complete a review of this licensure requirement because it was seen as an artificial barrier to entry. The Board established a task force comprised of private and public beauty schools, industry representatives, and Board members. The task force met for one day in April 2005 to review the existing curriculum.

The task force recommended to the Board that it maintain the current requirement of 1,600 hours. According to the Board's report, the recommendation, in part, was based on the cosmetology license being considered a "master" license. This license allows a person not only to perform hair services, but also manicuring and esthetic services. The task force stated that a person who wishes to perform only hair styling tasks has the option of obtaining a barber license, which is focused more on hair techniques as opposed to the manicuring and esthetics, and requires 1,500 hours of training.

The OER should be involved to insure articulation of an appropriate methodology for linking the results of recent occupational analyses, subject matter expert input, and curriculum changes.

The Board was given direction to handle this issue and has not effectively done so.

ISSUE #5: INCREASE ENFORCEMENT ON ILLEGAL LASER PROCEDURES?

Recommendation #5: *The Joint Committee recommends that the statute should be amended and clarified to give the Board additional tools and authority to address the illegal use of lasers.*

Staff Comments: There have been instances where cosmetologists are using lasers and have injured consumers. The use of lasers is not within a cosmetologist's scope of practice. Right now, the Board can only cite a person if he or she is actually seen using the laser. Even then, it is only a \$100 fine for a violation of Business and Professions Code Section 7320 which confers no authority to practice medicine or surgery.

The Board believes that it would be helpful if laser equipment was prohibited from being in a salon (unless of course they have a medical license), or at least language that is more specific so that it is easier to enforce and understand by licensees.

ISSUE #6: REDUCE MEETING FREQUENCY? Should the Board be meeting bi-monthly?

Recommendation #6: *The Joint Committee recommends that the Board should adjust its meeting schedule so that it meets on a quarterly basis.*

Staff Comments: It is unclear why it is necessary for the Board to meet so often. The Joint Committee is not aware of any other Department board that meets six times a year. It is standard for boards to meet quarterly. Reducing the number of meetings should not negatively impact the work of the Board. Staff can be directed to work on the various issues between board meetings, and in fact will be able to devote more time to the many issues that need to be addressed if they do not have to prepare for as many board meetings.

ISSUE #7: ADDRESS DEFICIENCIES IN AUDIT? A performance audit conducted in 2002 by the Department's Internal Audit Office revealed some program deficiencies – the enforcement program in particular.

Recommendation #7: *The Joint Committee recommends that the Board should be actively addressing the deficiencies found in its programs. Further, the Board should take the necessary steps to implement changes recommended in the DCA audit due to be completed in the near future.*

Staff Comments: The Department's Internal Audit Office conducted a performance audit of the then-Bureau in 2002. The audit found that the program lacked important elements that could assist management in measuring the success of its licensing and enforcement operations. The audit stated that the effectiveness of complaint activities could be improved. Specifically, the following areas were concerns that were recommended to be addressed:

- Untimely acknowledgment letters;
- Untimely delays in completing case files;
- Inaccurate determination of processing times for cases opened from inspection reports;
- Missing case files;
- Incomplete file documentation; and
- Inaccurate reporting of processing time for internal complaints opened for establishment inspections.

Deficiencies in the inspection unit were also cited. Specifically, the audit states that inspection operations are inadequate to ensure compliance with regulatory and internal policies and procedures. The audit recommended the monitoring and reporting of performance to ensure the Board's inspection function is in compliance with such policies and procedures, and that it is effective and efficient. Additionally, alternatives to current inspection procedures should be considered, such as decreasing the number of "Closed for the Day" stops and/or conduct specific, targeted violation sweeps in areas identified as having the greatest risk of harming consumers.

The Department's Internal Audit Office has recently begun another performance audit of the Board. The results and findings of the audit are expected in the Spring of 2006.

ISSUE #8: MODIFY ADMINISTRATIVE FINE SCHEDULE? Although the Board has the authority and capability to increase fine amounts, it has not done so.

Recommendation #8: *The Joint Committee recommends that the Board should modify its fine schedule without delay to ensure that fines serve as a sufficient deterrent.*

Staff Comments: The Board's Cite and Fine program was initiated in December 1994. Administrative citations are issued for violation of the Board's rules and regulations, primarily related to health and safety issues. Violations range from improper disinfection to unlicensed activity, with fines ranging from \$25 to \$500 for first violations. Most fines are waivable on the first offense, provided the offense is corrected within 30 days. A first offense may only have a \$25 fine assessment. Often, this fine does not serve as a deterrent and inspectors usually have to conduct multiple inspections before compliance is achieved. The fine amounts increase for second and third offenses.

SB 362 (Figueroa), Chapter 783, Statutes of 2003, provided for the revision of the Board's fine structure by increasing the maximum amount that could be imposed for administrative fines from \$2500 to \$5000. However, to date, no changes have been made by the Board.

ISSUE #9: **ASSESS ACTUAL COSTS FOR EXAMS?** The Board continues to spend more on its examination program than it makes.

Recommendation #9: *The Joint Committee recommends that the Board should assess actual costs for its examinations.*

Staff Comments: Business and Professions Code Section 7423 establishes the license fees for individual practice. The initial license fee for cosmetologists, barbers, and electrologists is \$50; the initial esthetician license fee is \$40; and the initial manicurist license fee is \$35. These fees are all at their statutory maximum and have not been increased since 1993.

Business and Professions Code Section 7423 also states that the fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination. Further, Business and Professions Code Section 7421 requires that the fees collected by the Board shall be in amounts necessary to cover the expenses of the Board in performing its duties.

To determine where the licensing fees should be set, Board staff conducted a review of all expenditures that the Board incurs and found that the Board expends approximately \$94.00 on processing, examining, and license issuance.

ISSUE #10. **CONTINUE WITH COMPUTER-BASED TESTING?** Should the Board continue to administer examinations on computer?

Recommendation #10: *The Joint Committee recommends that the Board continue indefinitely with computer-based testing.*

Staff Comments: There have been discussions in past board meetings regarding the return to paper and pencil testing. This should not occur. It is clear that computer-based testing has been successful. Additionally, it would only exacerbate the backlogs that the Board is experiencing.

ISSUE #11. SET ELECTIONS AND TERMS FOR OFFICERS OF THE BOARD?
Should the Board have a specific process for the election of officers?

Recommendation #11: *The Joint Committee recommends that election cycles and the terms of officers be specified in statute.*

Staff Comments: Most consumer boards have a process by which the officers are elected. This Board, however, does not. Even though the Chair of the Joint Committee was assured that the new officers would be elected after the December 2005 sunset hearing, the Board re-elected the president and vice president. The president has served two and a half years already, and will have served four years by the end of the current term.

Business and Professions Codes Section 5004 provides that the Board of Accountancy's president, vice president, and secretary-treasurer be elected by the board for a term of one year from among its members at the time of the annual meeting.

ISSUE #12. CONTINUE WITH THE BOARD? Should the Board be continued, reconstituted, or become a bureau within DCA?

Recommendation #12: *The Joint Committee recommends that the current membership of the Board should be sunsetted, and the Board should be immediately reconstituted.*

The new Board should utilize these recommendations as well as previous sunset recommendations in their strategic plan. Adherence to all recommendations should be made a top priority.

Staff Comments: A number of issues identified in the previous reviews of the Barbering and Cosmetology Board are still ongoing issues. The Board continues to ignore the intent of the Legislature, as well as the recommendations of the Joint Committee and the Department of Consumer Affairs, in a number of areas. Almost three years has passed since the Joint Committee last voted on recommendations and yet the following key issues remain unresolved:

- The Board has delayed adoption of regulations that are necessary to implement recommendations of the Joint Committee with regard to reciprocity. Additionally, the proposed regulations would have increased requirements for out-of-state licensees instead of facilitating reciprocity. Because of the excessive delay, the timeframe to pass regulations has expired, and the Board now has to start its regulatory process over.
- Although the Board meets every other month, consumer protection does not appear to be high on the agenda. One example is the outbreak of infections at foot spas. The Board did not use its authority to temporarily shut down the offending establishments in San Jose, nor has it used its regulatory authority to promulgate regulations to establish additional standards and requirements for foot spas.
- The law that established a process whereby barbering instructors and cosmetology instructors could voluntarily obtain a license from the Board was repealed pursuant to the

recommendations of the Joint Committee. However, the Board is proposing that the voluntary instructor's license be put back in place.

- The Board continues to spend more on its examination program than it makes. The Board has been told – and is required by law – to assess actual costs and requires that the fees collected by the Board shall be in amounts necessary to cover the expenses of the Board in performing its duties. The Board has not yet adjusted examination fees to reflect the true cost of the examination. The Board must link the fees for its examinations with their actual costs and should look for other ways of reducing examination costs as well.
- A number of studies required of the Board were barely examined – leaving the same questions unanswered.
- The Board has not promulgated regulations to revise its existing fine structure although it has had the authority and capability to do so and was directed to do so by the Legislature.
- The Board continually brings up the issue of returning to a paper and pencil examination even though they have been directed to use computer-based testing.
- Even though the Board received additional staffing to address backlogs, applicants still have to wait three months to be examined. Further, the average days to receive a license for applications not requiring examination has increased from 55 days in 2001/02 to 161 days in 2004/05. The problem of a backlog in the application process has been around for many years. This was first addressed in the 1999 sunset review. Because of a long waiting time for the examination, applicants experience significant delays in obtaining licensure.